

IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN
DISTRICT OF TEXAS SAN ANTONIO
DIVISION

HOWARD L. THOMAS

Plaintiff

V.

SCOTT DALE CLARK,

ANGELA CLARK,

WILSON COUNTY, TEXAS,

DEPUTY ROY ASHTON, in his

Individual and Official Capacity

as a Deputy Sheriff of Wilson County,

Texas; and

SHERIFF JIM STEWART,

in his Individual and Official Capacity

as a Deputy Sheriff of Wilson County,

Texas; and as successor in interest to

SHERIFF JOE TACKETT, in his

Individual and Official Capacity as

Sheriff of Wilson County, Texas.

Defendants

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

§

CIVIL ACTION NO

5:21-CV00640-OLG

**UNOPPOSED MOTION TO EXTEND TIME TO FILE AMENDED
COMPLAINT PURSUANT TO THE ORDER OF THE COURT**

TO THE HONORABLE JUDGE OF SAID COURT:

Howard Thomas, the Plaintiff in this case removed from State Court, seeks additional time to file the amended complaint as ordered in Order (Doc. No. 12) (the Order) granting Defendants' Wilson County, Texas Deputy Frank Ashtons's and

Sheriff Jim Stewart's Motion to Dismiss Plaintiff's Original Petition (Doc. No. 3) (the Motion). As grounds, therefore, Mr. Thomas shows as follows:

1.0. Introduction. This case was removed from state court on July 7, 2021.

Accordingly, the Plaintiff's operative pleading (the Petition) was drafted according to the Texas Rules of Civil Procedure. One week later on July 13, 2022, the Motion to Dismiss was filed, followed by a response and discovery proceeding. On February 23, 2022, the Court granted the Motion to Dismiss, finding the Petition deficient under Rule 12(b)(6) FED. R. CIV. PRO. and dismissed the claims against the state officials and Wilson County. In doing so, the Court necessarily construed the applicable law in a manner unanticipated by the Plaintiff and offered the Plaintiff fourteen days to replead in conformity with the Order. The Plaintiff's amended pleading is due on March 9, 2022, ten business days after the Order was filed.

2.0. Good Cause for the Extension. The repleading of the Petition in a case where most of the relevant facts are known only to the officials will require substantial legal research and careful drafting to meet the requirements of *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Additionally, the Court's guidance in the Order regarding Wilson County having the right to detain the Plaintiff for the protection of the public will need to be researched, briefed, and addressed in any new pleading. Since the undersigned attorney for the Plaintiff did not know when the Order would be issued, no time had been allocated for the necessary work. The undersigned's inability to respond in time is

compounded by the fact that on March 8th he is scheduled to travel to Denver to see his granddaughter for the first time. The result is that, when the Order was filed, the undersigned's calendar was already full so that he could see his granddaughter for a week. The combination of the serious consequences of the Order, the difficulty of the legal issues involved in repleading the Petition, and the timing of the Order being filed, all constitute good cause for a short extension of time to file an amended complaint.

2.1. Accordingly, the Plaintiff requests an extension of time up to and including March 23, 2022, to file a pleading in conformity with the Order.

3.0. The extension is unopposed. The undersigned has conferred with counsel for the state actors and has been informed that a 14-day extension is unopposed.

4.0. Request for relief. The Plaintiff seeks an extension of time to file an amended complaint up to and including March 23, 2022. The Plaintiff requests such other relief to which he may be entitled.

Respectfully submitted,



Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record on March 8, 2022 in accordance with the Federal Rules of Civil Procedure.



PETER J. STANTON

